March 17, 2005

The Honorable William H. Donaldson
Chairman
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Dear Chairman Donaldson:

We are writing with respect to the Securities and Exchange Commission's re-proposed rule 202(a)(11)-1, which would permit broker-dealers to charge their customers fees based on the assets in the account without requiring the broker-dealer to also register under the Investment Advisers Act of 1940. The proposal represents a sensible and balanced approach that does not subject broker-dealers to additional and duplicative regulation of the Advisers Act as a result of their providing professional advice, guidance and planning services to their customers. We urge the Commission to adopt the rule.

As the SEC noted in its proposing release, fee-based accounts benefit investors by better aligning their interests with those of brokerage firms. These types of accounts are entirely consistent with the best practices recommendations of the "Tully Committee," a panel appointed in the mid-1990s in response to concerns about actual and potential conflicts of interest in the retail brokerage industry. As a fundamental matter, the manner in which a broker is compensated should not determine whether an account relationship is regulated under the SEC's broker-dealer rules or its investment adviser rules.

We understand there is a pending lawsuit against the Commission which seeks to limit investor choice and preclude fee-based brokerage services. In our view, this litigation can best be understood as an effort to have the courts protect financial planners from competition in the marketplace. Of course, this is competition that, we might add, benefits investors. It is also instructive to note that American investors and market forces have already made clear what is the appropriate result here; they clearly want the fee-based payment option for their brokerage relationships. It is in the investing public's interest for our regulated broker-dealers to continue to provide financial advice, guidance, and planning. Additional and burdensome regulation of the Advisers Act is not in the public interest.

Broker-dealers are currently subject to significant regulatory requirements that in many respects go beyond those required of investment advisers. For example, brokers must provide only "suitable investment recommendations." There are also extensive disclosure requirements that include information about the costs and risks of financial products suggested to clients. Finally, broker-dealers are subject to minimum net capital

requirements, SIPC insurance and fidelity bonding to protect customer assets, all of which are not applicable to registered investment advisers.

Broker-dealers are subject to comprehensive regulatory oversight that is at least as rigorous as the regulatory oversight of investment advisers. The rule proposal benefits investors by giving them better choices as to how to compensate their registered broker-dealers for the professional advice and guidance being provided.

Accordingly, we urge the Commission to adopt the rule, but only in a way that will continue to permit (and not impose additional regulation on) the advice and financial planning services currently being offered to investors by registered broker-dealers. We commend you and your staff for fine work in crafting this proposal.

Yours truly,

MICHAEL G. OXLEY
Chairman

RICHARD H. BAKER
Chairman
Subcommittee on Capital Markets,
Insurance and Government
Sponsored Enterprises